

## **REMARKS**

Favorable reconsideration and allowance of the Claims of the present application are respectfully requested.

Applicants have carefully considered the Official Action mailed on January 21, 2010. Claims 18 and 21-25 are pending. Of the pending claims, the Official Action has rejected Claims 18 and 21 -25 under 35 U.S.C. §102(b) as allegedly anticipated by GenBank accession number AA10156 (hereinafter, "the GenBank reference").

Claims 18 and 22 have been amended to recite the DNA oligomer having a length of 1822 nucleotides when the DNA oligomer hybridizes to SEQ ID NO: 1, the DNA oligomer having a length of 897 nucleotides when the DNA oligomer hybridizes to nucleotides 16-912 of SEQ ID NO:1 and the DNA oligomer having a length of 816 nucleotides when the DNA oligomer hybridizes to nucleotides 97-912 of SEQ ID NO: 1. Support for this amendment can be found throughout the application, such as at page 11 lines 6-18, page 21 line 4 to page 22 line 2 and page 29 line 29 to page 30 line 7. No new matter has been added into the disclosure by way of this amendment.

In view of the following remarks, Applicants request further examination and reconsideration of the present patent application.

### **Rejections under 35 U.S.C. §102**

Claims 18 and 21-25 stand rejected under 35 U.S.C. §102(b) as allegedly anticipated by the GenBank reference. Claims 18 and 22 have been amended to recite a DNA oligomer having a length of 1822 nucleotides when the DNA oligomer hybridizes to SEQ ID NO: 1, the DNA oligomer having a length of 897 nucleotides when the DNA oligomer hybridizes to nucleotides 16-912 of SEQ ID NO:1 and the DNA oligomer having a length of 816 nucleotides when the

DNA oligomer hybridizes to nucleotides 97-912 of SEQ ID NO: 1.

The GenBank reference discloses one specific, structurally definable compound containing 415 nucleotides. Page 5 of the Official Action admits that SEQ ID NO:1 is only 74.5% identical to SEQ ID NO:2, which is 99.2% identical to the molecule in the GenBank reference. The GenBank reference does not disclose an oligomer having a length of 1822 nucleotides, an oligomer having a length of 897 nucleotides or an oligomer having a length of 816 nucleotides as recited in Claims 18 and 22 of the present application, from which Claims 21 and 23-25 depend. In contrast, the GenBank reference merely discloses a single compound containing 415 nucleotides, the single compound being more than 400 nucleotides shorter than the shortest oligomer claimed.

Thus, the GenBank reference is not an anticipatory reference, because it lacks a disclosure of a DNA oligomer having a length of 1822 nucleotides when the DNA oligomer hybridizes to SEQ ID NO: 1, the DNA oligomer having a length of 897 nucleotides when the DNA oligomer hybridizes to nucleotides 16-912 of SEQ ID NO:1 and the DNA oligomer having a length of 816 nucleotides when the DNA oligomer hybridizes to nucleotides 97-912 of SEQ ID NO: 1 as recited in Claims 18, 22 and all claims depending therefrom of the present application. Withdrawal of the rejection and issuance of 18 and 21-25 is earnestly solicited.

For the reasons set out above, Applicants respectfully submit that the application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are respectfully requested. Should the Examiner believe that anything further is needed to place the application in even better condition for allowance, the Examiner is requested to contact the Applicants' undersigned representative at the telephone number below.

Respectfully submitted,

/Peter I. Bernstein/

Peter I. Bernstein  
Registration No. 43,497

Scully, Scott, Murphy, & Presser, P.C.  
400 Garden City Plaza, Suite 300  
Garden City, New York 11530  
(516) 742-4343  
PIB/DRB:vc